

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

EMMANUEL A.,

Claimant,

and

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH No. 2006010807

DECISION

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on March 17, 2006.

Peter T. Haven, Attorney at Law, represented South Central Los Angeles Regional Center (Service Agency or SCLARC).

Victoria Baca, advocate, represented Emmanuel A. (Claimant), who was not present. Also representing Claimant were Silvio A., Claimant's father, and Sandra G., Claimant's mother, who were assisted by a Spanish language interpreter.

The parties presented oral and documentary evidence. The record was left open to permit Mr. Haven to submit a letter to correct a misstatement in Exhibit G. Ms. Baca did not object. On March 27, 2006, Mr. Haven's letter was received, marked as Exhibit 4, admitted into evidence, and the matter was then deemed submitted for decision.

ISSUE

Should the Service Agency be required to fund discrete trial training in the home for Claimant at the rate of 12 hours per week for six months, as recommended in the assessment dated September 29, 2005?¹

¹ This was the issue as framed by the parties at the administrative hearing.

FACTUAL FINDINGS

1. Claimant is nearly five years old and a consumer receiving services from the Service Agency under the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code² section 4500 et seq.), based on a diagnosis of autism.

2. Claimant's parents have requested that the Service Agency fund discrete trial training (DTT) in Claimant's home to address his behavioral issues. In a letter dated January 11, 2006, the Service Agency denied this request for DTT services. On January 20, 2006, Claimant submitted a Fair Hearing Request, and this matter ensued.

3. Claimant lives with his biological parents and his two siblings. Claimant has significant behavioral issues in his home. He is aggressive toward his parents and two siblings, including scratching, biting, hitting with both hands, and pulling hair. He tantrums when his parents restrict access to desired edibles (not part of his diet), when transitioning between preferred (coloring) and non-preferred activities (cutting), when he wants to engage the same activity (repeatedly watching the same movie), when he is unable to communicate his wants/needs, and when instructed to attempt self-help tasks (toileting). He has little or no awareness of safety.

4. In 2004-2005, Claimant was in a special education classroom at Loma Vista Preschool, a public school in the Los Angeles Unified School District (LAUSD), where he received the attention of a one-to-one aide. He also received occupational therapy and speech therapy services (one hour each/per week). At the same time, the school district provided DTT services through the Center for Autism Related Services (CARS), both at school and in the home, for a total of 22 hours per week.

5. In May 2004, the Service Agency funded behavioral management parent training classes for Claimant's parents. The parents attended the training classes, which were provided by Alfredo Kertzman, MSW. At the conclusion of that training, Kertzman recommended in a letter dated January 26, 2005, that Claimant's mother "obtain behavior modification services within the confines of her home." At least in part due to Kertzman's recommendation, SCLARC funded a behavioral assessment conducted by Familias First, a behavior management service provider, on March 19, 2005.

6. The March 19, 2005 evaluation recommended that Claimant should receive: (1) behavioral modification services at a rate of 12 hours per month for three months; and (2) Claimant should be referred for a DTT assessment to "determine the appropriateness of this service for him." Claimant's parents then requested the Service

² All statutory references are to the Welfare and Institutions Code, unless specified otherwise.

Agency to fund in-home DTT services, which SCLARC denied, stating that it was the responsibility of the school district to provide Claimant with DTT services.

7. Claimant's parents requested a Fair Hearing, which was held on August 2, 2005. The following are portions of the factual findings in the decision issued by Administrative Law Judge Mark T. Roohk:

8. Bruce Williams, Ph.D., SCLARC psychology consultant, reviewed the request for DTT services, and was instrumental in the decision to deny that request. In his testimony, he opined that . . . DTT services were inappropriate to address behavioral problems such as those demonstrated by Claimant, and in fact such behavioral problems were a contra-indication for DTT. . . .
(¶). . . (¶)

11. SCLARC is willing to implement the [March 19, 2005] recommendation of Familias First and provide Claimant with behavioral modification services at the rate specified.^[3] Claimant's parents have thus far declined this offer. They have concerns that behavioral modification will not be effective for Claimant, as they have attempted to use the training provided by Kertzman and others in the past to little or no effect. Claimant's parents much prefer in-home DTT services, as they believe that Claimant still has basic skills deficits that need to be addressed before behavioral modification can be effective, and they have observed Claimant make significant progress after receiving the in-home DTT services provided by CARS and funded by LAUSD. . . .

8. At the time of his decision, Judge Roohk was aware that the LAUSD had announced its intention to change several relevant aspects of Claimant's IEP (Individual Education Plan). Specifically, LAUSD was:

in the process of transitioning Claimant from special education in a typical school setting to a non-public school in which all of the students are in need of special education. When this transition is complete, Claimant will no longer be receiving [DTT] services from CARS, or any behavioral intervention services in the home. Instead, he will receive all services at school. It is anticipated that the transition to the non-public school, and the resultant termination of any in-home behavioral intervention services, will occur by September [2005].

³ See factual finding no. 6, *ante*.

Claimant has been attending a pre-kindergarten class at Village Glen School, a non-public school which is designed to serve special needs children, since September 2005. Claimant has a one-to-one aide at school, and participates in an intensive program that incorporates DTT through the entire day (8:30 a.m. – 2:30 p.m.) in the classroom environment. LAUSD is funding this program, but because DTT is part of the curriculum at school, LAUSD has discontinued providing the in-home DTT services through CARS.

9. Because of the possibility of a “short-fall” in services that SLCARC would be obligated to pick up, Judge Roohk ordered SCLARC to “fund an assessment to determine whether DTT services are appropriate for Claimant’s behavioral deficits.” This assessment was conducted on September 29, 2005, again by Familias First. The report of assessment recommended six months of DTT services at a frequency of 12 hours per week, plus four hours per month of DTT aide/supervision for program development and maintenance. The report concluded that: “Emmanuel demonstrated deficits in imitative skills, play skills, communication skills, and adaptive skills. He required physical prompting to complete all SDs [discriminative stimuli] given, . . . Given Emmanuel’s young age and the prevalence of his behavioral challenges and deficits, he would be a good candidate for DTT services.” It is this recommendation that is now in contention.

10. Dr. Williams has not changed his opinion since the previous administrative hearing. He does not contend that Claimant would receive no benefit from in-home DTT services. He considers DTT services to be useful to address deficits primarily in communication and social skills; however, he believes that behavior modification services will be most effective in addressing Claimant’s targeted problem behaviors, and he recommends that the Service Agency provide these services. He does not believe DTT is a good tool to reduce Claimant’s behavioral problems. He stated that “not only is DTT not good for behavioral problems, it is likely to be antecedent to worsening problems.” Dr. Williams notes that the September 29, 2005 assessment report, itself, does not set forth DTT services to address the targeted behavioral issues, but rather, is included as the means to address skill deficits. The report, according to Dr. Williams, sets forth behavior modification techniques to address Claimant’s behavior issues.

11. Dr. Williams also cites Judge Roohk’s conclusion that the in-home DTT services provided by the LAUSD for Claimant for approximately one year (2004-2005) appeared primarily to have addressed the skills needed for Claimant to succeed in school and classroom-based activities, while Claimant’s behaviors, such as aggression, non-compliance, and self-injury, appeared to have shown no improvement. Dr. Williams, however, lacked information about the DTT services being provided by the school district. He also has not examined Claimant.

12. Claimant’s father regularly observes his son at school. He said his son is calmer at school, tries to socialize with friends, and is more attendant with his teachers. Claimant’s father believes in-home DTT would help with his son’s non-compliance

issues and lack of safety awareness. For example, he has observed that his son is compliant at school when other children are sharing toys, whereas at home, Claimant will tantrum if another person touches his toys. Claimant's father believes DTT can teach his son awareness of safety issues. He notes that DTT could help his son to understand that putting his hand under hot water and not removing it is dangerous. He said that he and his wife went to the parent training classes three times. They "understand better," but they have not been able to effectuate substantial changes in Claimant's behavior.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Act, the Legislature codified the state's responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.)

2. The Lanterman Act gives regional centers, such as the Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Under section 4512, subdivision (b), the determination of which services and supports are necessary for each consumer shall be made through the individual program plan (IPP) process. The determination is made on the basis of the needs and preferences of the consumer, and shall include consideration of a range of service options, the effectiveness in meeting the goal, and the cost-effectiveness of each option. Thus, regional centers are responsible for developing and implementing an IPP, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

3. There is no dispute that Claimant needs in-home behavior intervention services to address his behavioral deficits. Applied behavioral analysis, including DTT, is generally accepted as perhaps the only treatment modality with a demonstrated effectiveness as a behavioral intervention for the autistic individual. Claimant's parents have pursued funding for in-home DTT services for more than one year because, as best they have been able to ascertain, the DTT services Claimant receives at school appear to be working there, and their attempts at implementing behavioral modification techniques at home have been unsuccessful.

4. The Service Agency is unwilling to provide DTT in the home, as requested by Claimant's parents, because it does not consider DTT services to be an effective means for addressing Claimant's behavioral issues. The only professional evaluation of Claimant's deficits, and the necessary services to address those deficits, is contained in the September 29, 2005 report, which has recommended in-home DTT services. Meanwhile, Claimant continues to receive no in-home services and there is no reduction in his problem behaviors.

5. Whether a particular methodology will best serve Claimant's particular needs is not the real issue. The overriding policy statement found in the Lanterman Act is to do everything necessary to allow the developmentally disabled individual to remain in his or her home and to be integrated into the community and become more independent.⁴ The law requires striking a balance between the Claimant's needs, or Claimant's parents' needs, to participate in the choice of appropriate services and supports, and the need of the Service Agency to be responsible to ensure that appropriate services are cost-effective. The inherency of the conflict is clear: can the Service Agency be flexible and creative, and respect and support the decision making authority of the family, and at once ensure that the provider has the ability to deliver quality services which are effective in meeting the goals that are agreed upon?

6. Claimant has the burden to establish that in-home DTT services are necessary for Claimant to become a functioning member of society, if possible. The recent assessment and recommendation of Familias First supports Claimant's request for DTT services. Given Claimant's young age, the fact that he has skill deficits that could benefit from DTT services, and thus far, he has not received such services through the Service Agency, there appears to be no reason why the Service Agency cannot contemporaneously provide behavior modification services, as they have agreed to do, and the requested in-home DTT services. Regardless of whether DTT is the best treatment modality to address certain targeted negative behaviors, an intensive program of DTT services in the home may well address some of Claimant's behavioral deficits, just as it has been doing with apparent success in the school environment. Further, at least an interim period of providing Claimant all appropriate services would allow further analysis to find the best services for meeting all of Claimant's needs.

ORDER

1. Within 20 days of the date of this Decision, the Service Agency shall provide DTT services, at the rate of 12 hours per week (plus four hours per month of DTT aide/supervision for program development and maintenance) for three months. A progress report, which contains a recommendation for continuing or not continuing the services, shall be prepared by the provider of the services no later than three weeks before the end of the three month period of services. The report shall be provided to the parties and reviewed by an interdisciplinary team to determine whether the amount of such therapy should be increased, decreased, or continued.

⁴ "Services and supports for persons with developmental disabilities" means specialized services and supports . . . directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual, or toward the achievement and maintenance of independent, productive, normal lives. . . . [and] may include . . . behavior training and behavior modification programs . . ." (§ 4512, subd. (b); cf., § 4648, subd. (a)(1).)

2. Within 20 days of the date of this Decision, the Service Agency shall provide in-home behavior modification services for three months. Before the end of that period, Claimant's progress shall be reviewed by an interdisciplinary team to determine whether the amount of such therapy should be increased, decreased, or continued.

3. Claimant's parents shall cooperate with the Service Agency by providing access to progress reports relating to the DTT services being provided in the school environment.

Dated: _____

MARK E. HARMAN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.